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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

March 12, 1997

William F. Caton, Acting Secretary
Federal Communications Commission
1919 M St., N.W.
Washington, D.C. 20554

**Re: CC Docket No. 96-45
Federal-State Joint Board on Universal Service**

Dear Mr. Caton:

On behalf of GE American Communications, Inc., we submit this letter to follow up on a meeting last week with Mark Nadel of the Common Carrier Bureau. We appreciated the opportunity to discuss our views on which companies should be required to contribute to the universal service mechanism. As a general matter, we agree with the Joint Board's recommendation that the contribution obligation should be defined broadly to include all telecommunications carriers, regardless what technology they use.

We believe, however, that it is important to clarify that the provision of satellite space segment on a non-common carrier basis does not constitute a "telecommunications service" under Section 3(46) of the Communications Act. To the extent that our clients or other satellite operators provide space segment on a non-common carrier basis, they should not be required to contribute to the fund. Specifically, we recommend that the Commission clarify as follows: For purposes of determining which parties are required to contribute, the offering of satellite space segment on a non-common carrier basis does not constitute "telecommunications service." The Commission has long recognized that satellite operations involve unique frequency coordination and other considerations, and hence that space segment is generally not provided "directly to the public, or to such classes of users as to be effectively available directly to the public . . . ." 1/ Moreover, satellite space

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1/ 47 U.S.C. § 3(46). See Domestic Fixed Transponder Sales, 90 FCC 2d 1238 (1982), aff'd sub nom. Wold Communications, Inc. v. FCC, 735 F.2d 1435 (D.C. Cir. 1984) (authorizing domestic satellite operators to sell transponder capacity and

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segment offerings are not interconnected with, and have no nexus to, the public switched telephone network, and so the public interest does not favor requiring contributions to the fund from satellite operators that in no way benefit from or relate to universal service.

In addition, we want to re-emphasize the importance of the FCC's clarifying that, to the extent parties such as our clients are required to make contributions, they should be given the right to recover their added costs from customers already taking service under long term contracts. We suggest that the Commission clarify as follows: The new requirement that telecommunications carriers contribute to the universal service support mechanism constitutes "substantial cause" that would provide a "public interest" justification for the carrier's unilaterally changing its fixed term contracts for the limited purpose of reflecting a proportionate share of the mandatory contributions in its rates. 2/

Thank you very much. Pursuant to your rules on *ex parte* communications, we are submitting two copies of this letter.

Sincerely yours,

David Sieradzki

David L. Sieradzki
Counsel for GE American Communications, Inc.

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recognizing that such sales do not constitute common carriage); National Ass'n of Regulatory Utility Comm'rs v. FCC, 525 F.2d 630, 641 & nn.58-60 (D.C. Cir.), cert. denied, 425 U.S. 992 (1976) ("NARUC I") (defining "common carriage").

2/ United Gas Pipe Line Co. v. Mobile Gas Service Corp., 350 U.S. 332 (1956); FPC v. Sierra Pacific Power Co., 350 U.S. 348 (1956); see also MCI Telecommunications Corp. v. FCC, 665 F.2d 1300 (D.C. Cir. 1981), appeal after remand, RCA Global Communications, Inc. v. FCC, 717 F.2d 1429 (D.C. Cir. 1983); RCA American Communications, Inc., 86 FCC 2d 1197, 1199-1200 (1981), aff'd in pertinent part on remand, 94 FCC 2d 1338, 1340 (1983); ACC Long Distance Corp. v. Yankee Microwave, Inc., 10 FCC Rcd 654 (1995).